



9H CITY COUNCIL REPORT

SUBJECT: Approval of the In-N-Out Burger Frontage/Public Improvement Agreement and the securities for the construction within public rights-of-way, and construction of wet utilities and storm water quality facilities.

SUBMITTED BY: Lindy Childers, P.E., Senior Civil Engineer

DEPARTMENT: Community Development Department

DATE: September 13, 2016

STRATEGIC RELEVANCE: Infrastructure

STAFF RECOMMENDATION(S):

Staff recommends City Council adopt a resolution authorizing the City Manager to sign the Frontage/Public Improvement Agreement for In-N-Out Burger (Attachment A).

In-N-Out Burgers will be responsible for maintenance of the improvements on the private property.

Note: "In-N-Out Burger" is the name of the restaurant and project. "In-N-Out Burgers" is the name of the corporation.

BACKGROUND / INTRODUCTION:

On January 20, 2016, the Planning Commission approved the Conditional Use Permit and a Specific Development Plan for In-N-Out Burger Restaurant per Planning Commission Resolutions 2016-03 and 2016-04, respectively.

In-N-Out Burgers, is requesting approval of a Frontage/Public Improvement Agreement for the development of the In-N-Out Burger drive-through restaurant located at 850 Groveland Lane. This project is located at the south-east corner of Ferrari Ranch Road and Groveland Lane.

The improvement plans are in accordance with the previously approved Specific Development Plan and the conditions of approvals set forth per the Specific Development Plan.

The In-N-Out Burger project will remove existing sewer, water, drainage, and parking lot improvements and construct new sewer, water, drainage and storm water quality facilities, and parking lot improvements. These improvements will be privately maintained.

In-N-Out Burger improvement plans have been reviewed and approved by the City Engineer and Fire Chief.



FINDINGS/ANALYSIS:

The applicant would like to begin construction. To allow for construction within public rights-of-way, a Frontage/Public Improvement Agreement (Agreement) is required for this project. In-N-Out Burgers has provided the required Agreement and securities. Securities are included with the Agreement to guarantee the performance and payment of the construction of improvements.

Based upon approval of the improvement plans that are in compliance with the requirements of the Specific Development Plan conditions of approval, the project is ready for construction.

A copy of the In-N-Out Burger Frontage/Public Improvement Agreement is included for reference as Attachment B.

CONCLUSION:

Based upon compliance with the requirements of the Specific Development Plan conditions for approval, staff recommends that the City Council take action to adopt a resolution:

- Authorizing the City Manager to sign the Frontage/Public Improvement Agreement for In-N-Out Burger.

Based upon Council approval, the Council may direct the City Clerk to cause the Frontage/Public Improvement Agreement to be filed with the County Recorder's Office.

ALTERNATIVES:

1. Decline to adopt a resolution authorizing the City Manager to sign the Frontage/Public Improvement Agreement for In-N-Out Burger.
2. Provide staff with additional direction.

ENVIRONMENTAL ANALYSIS:

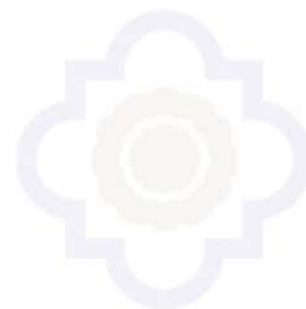
Pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Environmental Guidelines of the City of Lincoln, the City has determined that the project is exempt from further environmental review pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162 based upon the Addendum to the Lincoln Crossing Specific Plan Environmental Impact Report and Supplement, adopted on January 13, 2004. The requested approvals are consistent with the EIR and none of the circumstances set forth in CEQA Guidelines section 15162 requiring further environmental review exist. Furthermore, the approval of the Frontage/Public Improvement Agreement is exempt from further environmental review pursuant to CEQA Guidelines section 15268 because it is a ministerial approval.

FISCAL IMPACT:

The improvements will be privately maintained.

CITY ENGINEER REVIEW OF CONTENT: RAL

CITY MANAGER REVIEW OF CONTENT:



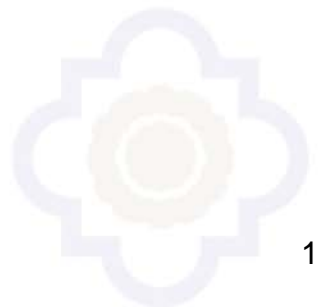


APPROVED AS TO LEGAL FORM: LZW

ATTACHMENTS:

Attachment A: Resolution authorizing the City Manager to sign the Frontage/Public Improvement Agreement for In-N-Out Burger.

Attachment B: Frontage/Public Improvement Agreement for In-N-Out Burger



ATTACHMENT A: RESOLUTION

RESOLUTION NO. 2016- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINCOLN AUTHORIZING
THE CITY MANAGER TO SIGN THE FRONTAGE/PUBLIC IMPROVEMENT
AGREEMENT FOR IN-N-OUT BURGER

WHEREAS, the Planning Commission approved the Conditional Use Permit and Specific Development Plan on January 20, 2016 per Planning Commission Resolution 2016-03 and 2016-04, respectively; and,

WHEREAS, the improvement plans for In-N-Out Burger have been approved by the City Engineer; and,

WHEREAS, In-N-Out Burgers, has requested the approval and recordation of the In-N-Out Frontage/Public Improvement Agreement and securities to allow for removal and replacement of existing utilities and construction within public rights-of-way; and,

WHEREAS, the Frontage/Public Improvement Agreement for In-N-Out Burger is attached hereto and included herein; and

WHEREAS, the Frontage/Public Improvement Agreement for In-N-Out Burger is exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162 based upon the Addendum to the Lincoln Crossing Specific Plan Environmental Impact Report and Supplement, adopted on January 13, 2004 and because none of the circumstances requiring further environmental review exists. Furthermore, the approval of the Frontage/Public Improvement Agreement is exempt from further review pursuant to CEQA Guidelines section 15268 as a ministerial approval.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN DOES
HEREBY RESOLVE AS FOLLOWS:**

The City Manager is authorized to sign the Frontage/Public Improvement Agreement for In-N-Out Burger and forward such agreement for the Recordation at the office of the County Recorder.

PASSED AND ADOPTED this 13th day of September, 2016.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Spencer Short, Mayor

ATTEST:

Gwen Scanlon, City Clerk



ATTACHMENT B: FRONTAGE/PUBLIC IMPROVEMENT AGREEMENT



NO FEE DOCUMENT

Government Code §6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF LINCOLN

600 Sixth Street
Lincoln, CA 95648
Attn: City Clerk

The Above Space For Recorder's
Use Only

Project Name: In-N-Out Burger Restaurant
Grading, Drainage, Storm
Drain and Utility Plan

Project Address: 850 Groveland Lane
APN: 021-344-005-000

FRONTAGE/PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2016 by and between the City of Lincoln, a Municipal Corporation of the State of California, hereinafter referred to as "City," and **In-N-Out Burgers**, a California Corporation, hereinafter referred to as "Principal".

1. Improvement Plans. The improvement plans for said real property (entitled "In-N-Out Burger Restaurant Grading, Drainage, Storm Drain, and Utility Plan" and incorporated herein by reference, hereinafter "Improvement Plans") include certain improvements required by the Lincoln Municipal Code and any conditions of approval for entitlements granted for the subject property by the City. These improvements (the location of which is shown on Exhibit A) must be constructed in a timely manner and in accordance with the City Design Criteria and Procedures Manual and Public Facilities Improvement Standards.

2. Encroachment Permit. The City shall grant Principal an encroachment permit to construct Required Improvements in accordance with Section 12.02 – excavations and Encroachments of the City of Lincoln Municipal Code.

3. Construction of Improvements. Principal agrees to construct and install at Principal's own cost and expense, improvements such as drainage facilities, sewer and water facilities, storm water quality system, or other facilities that are stated on the Improvement Plans approved by the City (hereinafter "Required Improvements"), in accordance with the Improvement Standards of the City within twelve (12) months of the date of this Agreement.

4. Time of Essence; Extension.

a. Time is of the essence of this Agreement. The City Engineer may extend the date for completing the Required Improvements. Extensions shall be granted only upon a showing of good cause by the Principal. The City Engineer shall be the sole and final judge as to whether good cause has been shown to entitle the Principal an extension; provided, however, the City Engineer shall be reasonable in reviewing any such request by the Principal.

b. Requests for extension of the completion date shall be in writing and delivered to the City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on the City.

c. In the event the City extends the time of completion of the Required Improvements, such extension may be granted without notice by the City to the Principal's surety and shall in no way release any guarantee or security given by the Principal pursuant to this Agreement, or relieve or release those providing an improvement security pursuant to this Agreement. The surety or sureties, if any, in executing the securities shall be deemed to have expressly agreed to any such extension of time.

d. In granting any extension of time, the City may require new or amended improvement security in amounts reasonably increased to reflect increases in the costs of constructing the Required Improvements or impose other reasonable conditions to protect its interests and ensure the timely completion of the Required Improvements.

5. Commencement of Work. The Principal shall notify the City Engineer of the commencement of work on the Required Improvements.

6. Inspection. The Principal shall at all times maintain proper facilities and safe access for inspection of the public improvements by City and to the shops wherein any work is in preparation. Upon completion of the work, the Principal may request a final inspection by the City Engineer or his designee. If the City Engineer or the designated representative determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and City standards. Principal shall bear all costs of plan check, inspection and certification.

7. Principal's Obligation to Warn Public During Construction. Until final acceptance of the Required Improvements, Principal shall and will take reasonable actions to protect the public from any such dangerous condition existing in the Required Improvements.

8. Superintendence by Principal. Principal shall require each contractor and subcontractor to have a competent foreman on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Required Improvements. In addition, Principal shall maintain an office with a telephone and Principal or a person authorized to make decisions and to act for Principal in Principal's absence shall be available on the job site within three (3) hours of being called at such office by the City during the hours of 9:00 A.M. through 5:00 P.M., Monday through Friday, or any other day or time when work is being performed on the Required Improvements.

9. Injury to Public Improvements, Public Property or Public Utilities Facilities. Principal shall replace or repair, or have replaced or repaired, all public improvements, public utility facilities, and surveying or subdivision monuments which are destroyed or damaged in the performance of any work under this Agreement. Principal shall bear the entire cost of replacement or repairs of any and all public or private utility property damaged or destroyed in the performance of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the reasonable satisfaction of the City Engineer.

10. Completion of Improvements. Upon satisfactory completion of all improvements required herein as reasonably determined by the City Engineer or his or her designee (hereafter the "City Engineer"), the City agrees to accept for maintenance the Required Improvements within the aforesaid real property subject to the provisions of Paragraphs 6 and 11 hereof.

11. Warranty. The Principal agrees to remedy any defects in the Required Improvements arising from faulty or defective construction of said improvements of which Principal is provided written notice by the City within twelve (12) months after issuance of a Notice of Completion by the City.

12. Repair or Reconstruction of Defective Work. If, within a period of twelve (12) months after issuance of a Notice of Completion by the City for the Required Improvements, any improvement or part of any improvement furnished and/or installed or constructed, or caused to be installed or constructed by Principal, or any of the work done under this Agreement materially fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Principal shall without delay and without any cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Required Public Improvements. If the Principal fails to commence such repair, replacement or reconstruction work within fifteen (15) days of receipt of written notice from the City specifying the need for such work in accordance with this requirement, then the City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Principal shall pay to City the actual cost of such repairs within thirty (30) days of the date of billing for such work by City.

13. Defense, Indemnification and Hold Harmless. Principal shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Principal, its personnel, employees, agents, or contractors in connection with or arising out of construction of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused by the gross negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Principal's obligation to indemnify City shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

14. Delay of Work. If the construction of the Required Improvements should be delayed without fault of the Principal, the time for the completion, therefor shall be extended by the City Engineer, for such period of time as the City Engineer may deem reasonable.

15. Inspection and Other Fees. The Principal shall pay to the City all fees imposed in connection with the inspection of the Required Improvements. These fees must be paid in full prior to the City's issuance of a Notice of Completion for the Required Improvements. The fees referred to above are not necessarily the only City fees, charges or other costs that have been, or will be, imposed on the subject real property and its development, and this Agreement shall in no way exonerate or relieve the Principal from paying such other applicable fees, charges, and/or costs.

16. Improvement Security. Concurrently with the execution of this Agreement, the Principal shall furnish the City with:

a. Faithful Performance Security. Principal shall provide faithful performance security as set forth in the City of Lincoln Municipal Code to secure faithful performance of this Agreement (the "faithful performance" security). This security shall be in the amount of one hundred percent (100%) of the total estimated cost of the Required Improvements, as determined by the City Engineer, which total cost is in the amount of **One Hundred Five Thousand Dollars (\$105,000)**.

b. Labor and Materials Security. Principal shall also provide payment security as set forth in the City of Lincoln Municipal Code to secure payment to the contractor, subcontractors and to persons renting equipment or furnishing labor or materials to them for the work (the "Labor and Materials"). This security shall be in the

amount of one hundred percent (100%) of the total estimated cost of the Required Improvements, as determined by the City Engineer, which total cost is in the amount of **One Hundred Five Thousand Dollars (\$105,000)**, and shall secure the obligations set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

c. Guarantee and Warranty Security. Principal shall also file prior to issuance of a Notice of Completion by the City for the Required Improvements, a "guarantee and warranty security" in the amount of twenty percent (20%) of the total estimated cost of the Required Improvements, as determined by the City Engineer, which total cost is in the amount of **Twenty-One Thousand Dollars (\$21,000)** to guarantee and warrant the Required Improvements for a period of one year following their completion and acceptance against any defective work or labor done, or defective materials furnished.

d. Monument Security. Principal shall also file with this Agreement a "monument security" in the amount of one hundred percent (100%) of the total estimated cost of the installation of survey monuments, as determined by the City Engineer, which total cost is in the amount of **Zero Dollars (\$0)** to guarantee and secure the placement of such monuments.

e. Bonds. Any bonds submitted as security pursuant to this section shall be furnished by companies who are authorized and licensed by the Insurance Commissioner of the State of California as "admitted surety insurers," to act as surety upon bonds and undertakings. The company shall maintain in this State at least one office for the conduct of its business. Bonds must be approved by the City. The bonds shall be furnished on the forms enclosed following this Agreement and shall be satisfactory to the City. All required securities shall be in a form reasonably approved by the City Attorney. The premiums for said bonds shall be paid by Principal. Alternative forms of security will be allowed upon approval of the City Engineer and shall be approved as to form by the City Attorney.

f. Changes to Agreement or Plans. No change, alteration, or addition to the terms of this Agreement or the plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as otherwise provided by the Subdivision Map Act.

g. Irrevocable. The securities shall be irrevocable, shall not be limited as to time (except as to the one-year guarantee and warranty period) and shall provide that they may be released, in whole or part, only upon the written approval of the City Engineer, not to be unreasonably withheld, conditioned or delayed, and as provided in this Agreement. All securities provided pursuant to this Agreement shall expressly obligate the surety for any extension of time authorized by the City for Principal's completion of the Required Improvements, whether or not the surety is given notice of such an extension by the City.

h. Attorney-in-Fact. The Attorney-in-Fact (resident agent) who executes the securities on behalf of the surety company must attach a copy of his/her Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

17. Release of Security.

a. Guarantee and Warranty Security. Any unused portion of the guarantee and warranty security may be released one year after issuance of a Notice of Completion for the Required Improvements by the City. The amount to be released shall first be reduced by the amount deemed reasonably necessary by the City to correct any defects in the Required Improvements that are known or believed by the City to exist at the end of the guarantee and warranty period subject, however, to Principal's rights and obligations to correct such defects pursuant to Section 12 of this Agreement. Any unreleased portion of the guarantee and warranty security shall remain in full force and effect unless and until the City notifies Principal in writing that the necessary repairs have been made to the satisfaction of the City Engineer and that the warranty period has been successfully completed.

b. Payment Security. The payment security may be released thirty-five (35) days after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code (commencing with Section 3114), but in no event shall such security be released prior to one hundred and twenty (120) days after issuance of a Notice of Completion for the Required Improvements by the City. The amount to be released shall first be reduced by the total of all claims on which an action has been filed and notice thereof given in writing to the City, with the remaining amount to be released upon the full resolution of all such claims by the Principal. City expressly may require the surety not to release the amount of security deemed necessary by City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

c. Faithful Performance Security. The faithful performance security may be released upon issuance of a Notice of Completion for the Required Improvements by the City.

18. Principal's Insurance.

a. Principal Shall Maintain Insurance. Prior to the commencement of any work on the improvements required by this Agreement, and until the improvements are completed and accepted by the City, Principal or Principal's General Contractor shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in this Section. and shall be placed with insurers with an A.M. Best rating of no less than A:VII.

b. Principal to Provide Evidence of Insurance. Prior to the execution of this Agreement and prior to the commencement of any work, the Principal or Principal's General Contractor shall furnish to the City, and the City must reasonably approve,

original certificates of insurance and endorsements, if applicable, effecting coverage for all policies required by this Agreement. Principal or Principal's Contractor shall not allow any subcontractor to commence work until appropriate insurance first shall have been so obtained by such subcontractor. Certificates shall be signed by a person authorized by the insurer, or insurers, to bind coverage on their behalf. Certificate of insurance and endorsements shall be on standard ACORD, Department of Insurance, and Insurance Services Office approved forms or on forms approved by the City Attorney. As an alternative to providing the City with approved forms of certificates of insurance and endorsements, the Principal may provide complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by this Section.

c. No Suspension of Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, terminated by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

d. Coverages Shall Not Limit Obligations. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Principal or Principal's General Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Principal under the Agreement.

e. Required Limits. Principal or Principal's General Contractor and subcontractors shall, at their expense, maintain in effect at all times during the term of this Agreement, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance of Principal or Principal's General Contractor and subcontractors of the following coverage and limit of insurance is a material element of the Agreement. The failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Agreement.

(1) Workers' Compensation Insurance. Principal or Principal's Contractor shall maintain, during the term of this Agreement, Workers' Compensation insurance for all employees as required by Labor Code section 3700 of the State of California and Employer's Liability Act, including Longshoremen's and Harbor Workers' Act ("Acts"), if applicable. Employer's Liability limits shall not be less than one million dollars (\$1,000,000) per occurrence. The Principal or Principal's General Contractor shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work falling within the terms of this Agreement. Principal or Principal's Contractor shall indemnify and hold harmless the City for any damage resulting to it, including attorney fees, from failure to take out and maintain such insurance.

(2) Commercial General Liability Insurance. Principal or Principal's Contractor shall maintain during the term of this Agreement such commercial general

liability insurance as shall insure the City, its elective and appointive boards and commissions, officers, agents and employees, Principal and any contractor or subcontractor performing work covered by this Agreement. The insurance shall include, but not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of Principal, any contractor's or subcontractor's operations hereunder, whether such operations are by Principal or any contractor or subcontractor or by anyone directly or indirectly employed by either Principal or any contractor or subcontractor. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) per policy aggregate. As an alternative to the policy aggregate the Principal may have an aggregate limit of one million dollars (\$1,000,000) per project apply. Coverage shall be at least as broad as Insurance Services Office "occurrence form CG 00 01 (ed. 10/01)" covering commercial general liability or its equivalent.

(3) Endorsements. Principal shall see that the commercial general liability insurance shall include, or be endorsed to include, the following:

(a) Provision or endorsement naming the City of Lincoln, its officers, employees, agents, boards, commissions, and volunteer police officers and firefighters as Additional Insureds with respect to liability arising out of the performance of any work under this Agreement.

(b) Provision or endorsement waiving any rights of subrogation against the City, its officers, officials, employees, agents, boards, commissions and volunteer police officers and firefighters.

(c) Provision or endorsement stating that insurance is Primary insurance with respects the City, its officers, employees, agents, boards, commissions, and volunteer police officers and firefighters, to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, boards, commissions, and volunteers shall be excess of the Principal's insurance and shall not contribute with it.

(d) Provision or endorsement stating that the Principal's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross-liability).

(e) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, employees, agents, boards, commissions, and volunteers.

19. Prevailing Wage. In the event it is determined that the Principal is required to pay prevailing wages for the work performed under this Agreement, the Principal and the Principal's General Contractor shall pay all penalties and wages as required by applicable law.

20. Interest. Interest shall accrue at the highest rate permitted by law on all sums from the date payment is due under the terms of this Agreement and the sum due is certain.

21. Title to Required Improvements. The City shall not accept any real property to be dedicated or the Required Improvements unless they are constructed in conformity with the approved plans and specifications, approved modifications, if any, and City Improvement Standards and Specifications, to the reasonable satisfaction of the City Engineer. Until such time as the Required Improvements are accepted by the City, Principal shall retain title and shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed.

Title to and ownership of any real property to be dedicated and the Required Improvements constructed under this Agreement by Principal shall vest absolutely in the City upon completion and acceptance in writing of such Required Improvements by City. The City shall not accept the Required Improvements unless title to the Required Improvements is entirely free from lien. Prior to acceptance, Principal shall supply the City with appropriate lien releases, at no cost to and in a form reasonably acceptable to the City.

22. Principal Not Agent of City. Neither Principal nor any of Principal's agents, contractors, or subcontractors are or shall be considered to be agents of the City in connection with the performance of Principal's obligations under this Agreement.

23. Notices. All notices required under this Agreement shall be in writing, and delivered in person or sent by registered or certified mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City Engineer
CITY OF LINCOLN
600 Sixth Street
Lincoln, CA 95648

Notices required to be given to Principal shall be addressed as follows:

In-N-Out Burgers
13502 Hamburger Lane
Baldwin Park, CA 91706
Attention: Real Estate Department

24. Attorneys' Fees. In the event that it is necessary for any party to enforce the obligations in this Agreement including without limitation the obligations secured by the improvement security furnished pursuant to this Agreement thereof, the party shall be entitled to recover its costs and reasonable expenses and fees including reasonable attorneys and litigation fees, expert witness fees and costs, and all other costs.

25. Personal Nature of Principal's Obligations/Assignment. All of Principal's obligations under this Agreement are and shall remain the personal obligations of Principal notwithstanding a transfer of all or any part of the property subject to this Agreement, and Principal shall not assign any of its obligations under this Agreement without the prior written consent of the City.

26. Compliance with Laws. Principal, the City, and their agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the work required by this Agreement including, but not limited to, obtaining all applicable permits and licenses.

27. No Vesting of Rights. Entering into this Agreement shall not be construed to vest Principal's rights with respect to any change in any zoning or building law or ordinance.

28. Approvals by City. Any approval or consent that is to be given by the City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on the City.

29. Construction and Interpretation. It is agreed and acknowledged by Principal that the provisions of this Agreement have been arrived at through negotiation, and that Principal has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

30. Successors and Assigns -- Covenant Running With the Land. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. The Agreement shall be recorded in the Office of the Recorder of Placer County and shall constitute a covenant running with the land and an equitable servitude upon the subject property.

31. Extension of Time. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection, the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

32. Actions. Any action by any party to this Agreement, or any action concerning a security furnished pursuant thereto, shall be brought in the appropriate court of competent jurisdiction within the County of Placer, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location. The law governing this Agreement is the law of the State of California.

33. Integration. This Agreement is an integrated agreement. It supersedes all prior negotiations, representations, or agreements, either written or oral.

34. Severability. If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CITY:
City of Lincoln,
a Municipal Corporation
of the State of California

PRINCIPAL:
In-N-Out Burgers,
a California Corporation

By: _____
Matthew Brower, City Manager

By:  _____
Carl G. Van Fleet
Executive Vice President of Planning
& Development
Phone: (626) 813-8263

ATTEST:

Gwen Scanlon, City Clerk

APPROVED AS TO FORM:

Jonathan P. Hobbs, City Attorney

Exhibit A

Refer to In-N-Out Burger Restaurant Grading, Drainage, Storm Drain, and Utility Plan
Improvement Plans

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Los Angeles)
 On June 29, 2016 before me, Lori Brazzill, Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared Carl G. Van Fleet
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Frontage/Public Improvement Agreement Document Date: June 29, 2016
 Number of Pages: 12 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: <u>Carl G. Van Fleet</u>	Signer's Name: _____
<input checked="" type="checkbox"/> Corporate Officer — Title(s): <u>EVP of Planning & Development</u>	<input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General	<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact	<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator	<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
Signer Is Representing: <u>In-N-Out Burgers</u>	Signer Is Representing: _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the City Council of the City of Lincoln, State of California and **In-N-Out Burgers**, a California corporation, (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement identified as **Frontage/Public Improvement Agreement for In-N-Out Burger Restaurant, Grading, Drainage, Storm Drain and Utility Plan**, is hereby referred to and made a part hereof; and

WHEREAS, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement and further to pay all City engineering fees and other City fees incurred during performance of the agreement.

NOW, THEREFORE, we, the principal and RLI Insurance Company, as surety, are held and firmly bound unto the City of Lincoln hereinafter called ("City"), in the penal sum of **One Hundred Five Thousand, and no/100 dollars (\$105,000.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.


IN WITNESS WHEREOF, this Faithful Performance Bond has been duly executed by the principal and surety above named, on this 24th day of June 2016.

RLI Insurance Company
Name of Surety

9025 North Lindbergh Drive

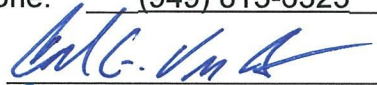
Peoria, IL 61615
Address of Surety

480-940-8427
Telephone No. of Surety


Attorney-in-Fact, Renato F Reyes

Principal:
In-N-Out Burgers,
a California corporation

Contact: Carl Van Fleet
Phone: (949) 813-6323

By: 
Carl G. Van Fleet
Executive Vice President of
(Print Name & Title) Planning & Development

And
By: _____

(Print Name & Title)

NOTE: If principal is a partnership, all partners should execute the bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

NOTICE: The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Placer County.

MANDATORY: The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

APPROVAL: Bonds must be approved by City.

REQUEST TO INSURER TO SUBMIT DOCUMENTS: Execution of this document shall constitute the City's formal request to the insurer to provide the City with evidence of authorization as an admitted surety in the State of California from the California Department of Insurance and that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended.

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On JUNE 24th 2016 before me, Edward C. Spector, Notary Public, personally appeared Renato F Reyes who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the — person(s) acted, executed the instrument.

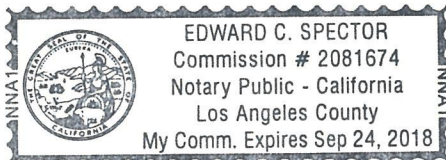
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



Signature of Notary Public





RLI Surety
9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036
www.rlicorp.com

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Tracy Aston, Ashraf Elmasry, Simone Gerhard, KD Conrad, Edward C. Spector, Daravy Mady, James Ross, B. Aleman, Lisa Crail,
Kristine Mendez, Misty Wright, Renato F. Reyes, jointly or severally

in the City of Los Angeles, State of California its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 17th day of August, 2015.



RLI Insurance Company

By: B. W. Davis
Barton W. Davis Vice President

State of Illinois }
County of Peoria } SS

On this 17th day of August, 2015, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

By: Jacqueline M. Bockler
Jacqueline M. Bockler Notary Public



CERTIFICATE

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 24th day of JUNE, 2016.

RLI Insurance Company

By: B. W. Davis
Barton W. Davis Vice President

0433477020212

A0058514

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Los Angeles)
 On June 29, 2016 before me, Lori Brazzill, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Carl G. Van Fleet
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Faithful Performance Bond Document Date: June 24th, 2016
 Number of Pages: 2 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Carl G. van Fleet Signer's Name: _____
☒ Corporate Officer — Title(s): EVP of Planning & Development ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact ☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator ☐ Trustee ☐ Guardian or Conservator
☐ Other: _____ ☐ Other: _____
 Signer Is Representing: In-N-Out Burgers Signer Is Representing: _____

PAYMENT BOND

WHEREAS, the City Council of the City of Lincoln, State of California, and **In-N-Out Burgers**, a California corporation, (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement identified as **Frontage/Public Improvement Agreement for In-N-Out Burger Restaurant, Grading, Drainage, Storm Drain and Utility Plan**, is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Lincoln to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

NOW, THEREFORE, said principal and the undersigned as corporate surety, are held firmly bound unto the City of Lincoln and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of **One Hundred Five Thousand, and no/100 dollars (\$ 105,000.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney fees, incurred by City in successfully enforcing the obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

Bond Number: CMS292655
Premium: Included in Cost of
Performance Bond.

IN WITNESS WHEREOF, this Payment Bond has been duly executed by the principal and surety above named, on this 24th day of June 2016.

RLI Insurance Company
Name of Surety

9025 North Lindbergh Drive

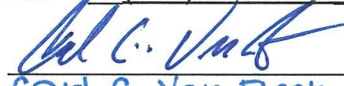
Peoria, IL 61615
Address of Surety

480-940-8427
Telephone No. of Surety


Attorney-in-Fact, Renato F Reyes

Principal:
In-N-Out Burgers,
a California corporation

Contact: Carl Van Fleet
Phone: (949) 813-6323

By: 
Carl G. Van Fleet
Executive Vice President of
(Print Name & Title) Planning & Development

And
By: _____

(Print Name & Title)

NOTE: If principal is a partnership, all partners should execute the bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

NOTICE: The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Placer County.

MANDATORY: The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

APPROVAL: Bonds must be approved by City.

REQUEST TO INSURER TO SUBMIT DOCUMENTS: Execution of this document shall constitute the City's formal request to the insurer to provide the City with evidence of authorization as an admitted surety in the State of California from the California Department of Insurance and that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended.

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

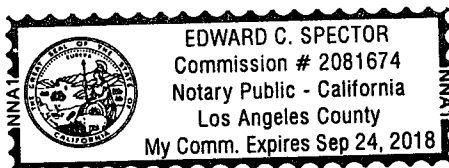
County of Los Angeles

On JUNE 24th 2016 before me, Edward C. Spector, Notary Public, personally appeared Renato F Reyes who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the — person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Signature of Notary Public





RLI Surety
9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036
www.rlicorp.com

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Tracy Aston, Ashraf Elmasry, Simone Gerhard, KD Conrad, Edward C. Spector, Daravy Mady, James Ross, B. Aleman, Lisa Crail,
Kristine Mendez, Misty Wright, Renato F. Reyes, jointly or severally

in the City of Los Angeles, State of California its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 17th day of August, 2015.



RLI Insurance Company

By: B. W. Davis
Barton W. Davis Vice President

State of Illinois }
County of Peoria } SS

On this 17th day of August, 2015, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

By: Jacqueline M. Bockler
Jacqueline M. Bockler Notary Public



CERTIFICATE

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 24th day of JUNE, 2016.

RLI Insurance Company

By: B. W. Davis
Barton W. Davis Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Los Angeles)
 On June 29, 2016 before me, Lori Brazzill, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Carl G. Van Fleet
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Payment Bond Document Date: June 24th, 2016
 Number of Pages: 2 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Carl G. Van Fleet Signer's Name: _____
☒ Corporate Officer — Title(s): EVP of Planning & Development ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact ☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator ☐ Trustee ☐ Guardian or Conservator
☐ Other: _____ ☐ Other: _____
 Signer Is Representing: In-N-Out Burgers Signer Is Representing: _____



9I

CITY COUNCIL REPORT

SUBJECT: Overall Open Space Management Plan Contract

SUBMITTED BY: Jennifer Hanson, Director of Public Services

DEPARTMENT: Public Services

DATE: September 13, 2016

STRATEGIC RELEVANCE: Infrastructure

STAFF RECOMMENDATION(S):

Adopt a resolution authorizing the City Manager to: execute a Contract for Services with Cardno for environmental consulting services for the purpose of completion of an Overall Open Space And Preserve Management Plan for a total amount not to exceed \$27,500 (10% contingency included) for a one-year period (ending September 13, 2017), with the option to extend the contract for one additional one-year term and augment the Fiscal Year (FY) 2016/2017 Development Services budget in Fund 248 in the amount of \$27,500.

BACKGROUND / INTRODUCTION:

The City of Lincoln (City) owns and operates several preserves and open space areas throughout the City. Typically, the preserves are areas of land that required indefinite preservation as a result of a permitting action by the US Army Corps (USACE) associated with the permitting of a development. Open space areas are typically areas within a new development that are required to be set aside as open space to conform to the City's General Plan requirements.

The City's current open space areas and preserves either have a deed restriction placed on the property or have a deed restriction and are under conservatorship by a third party. In order to accept new preserves into the City's system of open space and preserve, the USACE has requested that the City prepare an Overall Open Space Operations and Management Plan (O&M Plan) for Open Space and Preserves under the City's ownership and control.

It is intended that O&M Plan will apply to all existing preserves and open space; as well as will apply to new open space areas and preserves. Once approved, the O&M Plan will supersede the previously relied upon plans. This will streamline monitoring and reporting requirements as well as will provide consistent standards for operations and maintenance.



The O&M Plan will contain the standards, policies, reporting methods, management, and activities permitted in Open Space to be dedicated to the City in the future and, where appropriate, existing City-managed open space areas. This Plan will only include items pertaining to Open Space management and won't include language that concerns the establishment of habitat within mitigation Preserves, as such establishment would be expected to occur prior to preserve turn over to the City.

In order for a new development to be accepted into the City's system of open space and preserves, a baseline condition report would be required to be prepared that would demonstrate that the preserve/open space is compliant with all permit and City requirements.

ANALYSIS:

This effort was originally initiated by the Village 1 project proponents. In order to complete the effort, staff recommends that the effort be brought under the City's authority since the plan will not only apply to existing open space and preserve areas but also to new development beyond that of Village 1. The Village 1 project proponents contracted with Cardno for the initial effort. Cardno is a firm that provides environmental consultation and specializes in preserve development, design, and management. Cardno has already prepared a draft O&M Plan and has been participating in the negotiations with the USACE. Due to the amount of work that has already been completed by Cardno and their familiarity with the project, staff has determined that it is in the City's best interest to dispense of the formal bidding procedures outlined in Chapter 3.24.140 of the Municipal Code and award the contract to complete the O&M Plan directly to Cardno.

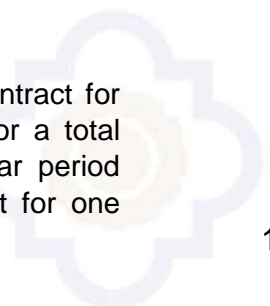
Cardno provided a scope of work that is included in the attached Contract. The scope of work provided included a total cost of \$25,000 (10% contingency to be added to allow for a total contract amount of \$27,500). The contract will be a time and materials contract and as such, payment will only be made for actual work performed.

Staff recommends the City Council adopt a resolution authorizing the City Manager to: execute a Contract for Services with Cardno to provide environmental consulting services for the purpose of completion of the O&M Plan for a total amount not to exceed \$27,500 for a one year period (ending September 13, 2017), with the option to extend the contract for one additional one-year term and to execute any necessary change orders that are within the contingency budget; and to augment the FY 16/17 Development Services budget in Fund 248 in the amount of \$27,500.

ALTERNATIVES:

The City Council may take the following actions:

1. Adopt a resolution authorizing the City Manager to: A) Execute a Contract for Services with Cardno to provide environmental consulting services for a total amount not to exceed \$27,500 (contingency included) for a one-year period (ending September 13, 2017), with the option to extend the contract for one





additional one-year term and to execute any necessary change orders that are within the contingency budget; and B) Augment the FY 16/17 Development Services budget in Fund 248 in the amount of \$27,500.

2. Provide staff with additional direction.
3. Decline to adopt the proposed resolution.

FISCAL IMPACT:

It is proposed to fund the contract from the Development Services Professional Services account 248-6875-50400-0000. The FY 16/17 Annual Budget did not include money for this effort; as such, the budget requires augmentation in the amount of \$27,500.

CITY MANAGER REVIEW OF CONTENT:

APPROVED AS TO LEGAL FORM: LZW

ATTACHMENTS:

1. Resolution
2. Contract



RESOLUTION NO. 2016 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINCOLN AUTHORIZING THE CITY MANAGER TO: A) EXECUTE A CONTRACT FOR SERVICES WITH CARDNO TO PROVIDE ENVIRONMENTAL CONSULTING SERVICES FOR COMPLETION OF AN OVERALL OPEN SPACE MANAGEMENT PLAN FOR AN AMOUNT NOT TO EXCEED \$27,500 (\$2,500 CONTINGENCY INCLUDED) FOR A ONE-YEAR PERIOD (ENDING SEPTEMBER 13, 2017), WITH THE OPTION TO EXTEND THE CONTRACT FOR ONE ADDITIONAL ONE-YEAR TERM AND TO EXECUTE ANY NECESSARY CHANGE ORDERS THAT ARE WITHIN THE CONTINGENCY BUDGET; AND B) AUGMENT THE FISCAL YEAR 16/17 DEVELOPMENT SERVICES BUDGET IN FUND 248 IN THE AMOUNT OF \$27,500

WHEREAS, the City has approximately 1,467 of open space and preserve areas that require operation and maintenance; and

WHEREAS, the continued buildout of the City's General Plan will result in the creation of additional open space and preserve areas; and

WHEREAS, the United States Army Corp of Engineers (USACE) requested that the City prepare an Overall Open Space Operations and Management Plan (O&M Plan) for Open Space and Preserves under the City's ownership and control; and

WHEREAS, in order new development that requires permitting from the USACE, the USACE is requiring the City to have an approved O&M Plan that identifies a process for accepting new open space and preserves; and

WHEREAS, it is intended that O&M Plan will apply to all existing preserves and open space; as well as to all new open space areas and preserves. Once approved, the O&M Plan will supersede the previously relied upon plans; and

WHEREAS, the effort to develop the O&M Plan was previously initiated by the Village 1 project proponents; and

WHEREAS, the Consultant who developed the draft O&M Plan is Cardno; and

WHEREAS, due to the amount of work that has already been completed by Cardno and their familiarity with the project, staff has determined that it is in the City's best interest to dispense with the formal bidding procedures outlined in Chapter 3.24.140 of the Municipal Code and award the contract to complete the O&M Plan directly to Cardno; and

WHEREAS, the development of the O&M Plan is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines sections 15307 and 15308 as actions by regulatory agencies for the maintenance, restoration and enhancement of natural resource and for the protection of the environment.

NOW, THEREFORE, BE IT RESOLVED, the City Council hereby authorizes the City Manager to: A). Execute a Contract for Services with Cardno to provide environmental consulting services for the purpose of completion of the O&M Plan for a total amount not to exceed \$27,500 (contingency included) for a one-year period (ending September 13, 2017), with the option to extend the contract for one additional one-year term and to execute any necessary change orders that are within the contingency budget; and B). Augment the FY 16/17 Development Services Fund 248 budget in the amount of \$27,500.

PASSED AND ADOPTED this 13th day of September, 2016.

AYES: COUNCILMEMBERS

NOES: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

Spencer Short, Mayor

ATTEST:

City Clerk



CONTRACT FOR SERVICES

THIS CONTRACT is made on September 13, 2016 by and between the CITY OF LINCOLN ("City"), and CARDNO ("Consultant/Contractor").

WITNESSETH:

WHEREAS, the City desires a contract with CARDNO, to provide environmental consulting services for the purpose of producing an Overall Open Space Operations and Management Plan to cover all open space and preserve areas under the city's ownership and control, for a one-year period beginning FY 2016/2017 (September 13, 2016) and ending FY 2017/2018 (September 13, 2017), with the option to extend the contract for one additional one-year term if needed, for a total amount not to exceed \$27,500 (10% escalation included).

WHEREAS, the Consultant/Contractor has presented a proposal for such services to the City, attached hereto and incorporated herein as **Exhibit A**, and is duly licensed, qualified and experienced to perform those services;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. Consultant/Contractor shall do all work, attend all meetings, produce all reports and carry out all activities necessary for the completion of the services described in **Exhibit A** ("Scope of Work"). This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

B. Consultant/Contractor enters into this Contract as an independent contractor and not as an employee of the City. The Consultant/Contractor shall have no power or authority by this Contract to bind the City in any respect. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant/Contractor are employees, agents, contractors or subcontractors of the Consultant/Contractor and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant/Contractor by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Contract.

C. The Consultant/Contractor agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.



2. TERM OF CONTRACT:

A. The services of Consultant/Contractor are to commence upon execution of this Contract the City, and shall be undertaken and completed in accordance with the Schedule of Performance, attached hereto and incorporated herein by this reference as **Exhibit B**.

B. Consultant/Contractor's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 3.

C. The City Manager or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract for a period equal to the original term of this Contract in the manner provided in Section 5, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 3, Compensation.

3. COMPENSATION:

A. The Consultant/Contractor shall be paid monthly for the actual fees, costs and expenses for all time and materials required and expended, but in no event shall total compensation exceed \$27,500 (10% escalation included) for a one-year period (ending September 13, 2017) without the City's prior written approval. Account Code Number/Account Description for Scope of Work to be charged to: Development Services Fund/Professional Services Account Fund: 248-6875-50400 = \$27,500.

B. Said amount shall be paid upon submittal of a monthly billing showing completion of the tasks that month. Consultant/Contractor shall furnish City with invoices for all expenses as well as for all materials authorized by this Contract. The invoices shall be submitted with the monthly billing. If Consultant/Contractor's performance is not in conformity with the Schedule of Performance, payments may be delayed or denied, unless the Consultant/Contractor's failure to perform in conformity with the Schedule of Performance is a documented result of the City's failure to conform to the Schedule of Performance, or if the Schedule of Performance is extended pursuant to Section 5.

C. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 4.

4. TERMINATION:

A. This Contract may be terminated by either party, provided that the other party is given not less than 30 calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that the Consultant/Contractor is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant/Contractor shall immediately suspend its activities under this Contract.



C. Notwithstanding any provisions of this Contract, Consultant/Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Consultant/Contractor, and the City may withhold any payments due to Consultant/Contractor until such time as the exact amount of damages, if any, due the City from Consultant/Contractor is determined.

D. In the event of termination, the Consultant/Contractor shall be compensated as provided for in this Contract, except as provided in Section 4.C. Upon termination, the City shall be entitled to all work, including, but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7. hereof.

5. AMENDMENTS, CHANGES OR MODIFICATIONS:

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

6. EXTENSIONS OF TIME:

Consultant/Contractor may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 5.

7. PROPERTY OF CITY:

A. It is mutually agreed that all materials prepared by the Consultant/Contractor under this Contract shall become the property of the City, and the Consultant/Contractor shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the Consultant/Contractor shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant/Contractor in performing this Contract which is not Consultant/Contractor's privileged information, as defined by law, or Consultant/Contractor's personnel information, along with all other property belonging exclusively to the City which is in the Consultant/Contractor's possession.

B. Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant/Contractor hereunder (the "Work") to be a work made for hire. Consultant/Contractor acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the City.

8. COMPLIANCE WITH ALL LAWS; PREVAILING WAGES:



A. Consultant/Contractor shall comply with all applicable laws, ordinances, and codes of federal, state and local governments, as applicable, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. If necessary, it shall be City's responsibility to obtain all rights of way and easements to enable Consultant/Contractor to perform its services hereunder. Consultant/Contractor shall assist City in providing the same.

B. Some or all of the work herein may be a "public work" within the meaning of Labor Code section 1720, subject to the payment of prevailing wages under Labor Code sections 1720 et seq. Accordingly, Consultant/Contractor shall cause all such work, as applicable, to be performed as a "public work" in compliance with California prevailing wage laws, including the payment of prevailing wages, as applicable. In the event it is determined that the Consultant/Contractor is required to pay prevailing wages for the work performed under this Agreement, but failed to do so, the Consultant/Contractor shall pay all applicable penalties, costs, fees, wages, and wage differential. To the extent the project is subject to the requirement of payment of prevailing wages pursuant to California Labor Code sections 1720 et seq, then the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Copies of the prevailing rate of per diem wages are on file at the City's offices, which shall be made available to any interested party on request. Consultant/Contractor shall cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site, as well as all related notices required by applicable law and regulation.

9. WARRANTIES AND RESPONSIBILITIES - CONSULTANT/CONTRACTOR:

A. Consultant/Contractor agrees, represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required for Consultant/Contractor to practice its profession and to properly provide the services set forth in **Exhibit A** in a manner which is consistent with the generally accepted standards of Consultant/Contractor's profession. Consultant/Contractor represents and warrants to City that Consultant/Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits and approvals which are legally required for Consultant/Contractor to practice its profession at the time the services are performed.

B. Consultant/Contractor agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, state and local law in accordance with Section 17.A hereof.

C. Consultant/Contractor shall designate a project manager who at all times shall represent the Consultant/Contractor before the City on all matters relating to this Contract. In the event that City, in its sole discretion, at any time during the term of this Contract, desires the removal of any person or persons assigned by Consultant/Contractor, including but not limited to the project manager, to perform services pursuant to this Contract, Consultant/Contractor shall remove any such person immediately upon receiving notice from City of the desire of City for the removal of such person or persons.



D. Except as set forth in **Exhibit D**, Consultant/Contractor shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant/Contractor only the facilities, equipment, and other materials listed in **Exhibit D** according to the terms and conditions set forth in **Exhibit D**.

E. Consultant/Contractor shall provide corrective services without charge to the City for services which fail to meet the above professional and legal standards and which are reported to Consultant/Contractor in writing within sixty (60) days of discovery. Should Consultant/Contractor fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and the Consultant/Contractor shall be liable for any expenses thereby incurred.

10. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City, which will not be unreasonably withheld. Consultant/Contractor shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant/Contractor.

11. ASSIGNABILITY:

Consultant/Contractor shall not assign or transfer any interest in this Contract whether by assignment or novation, without the prior written consent of the City which will not be unreasonably withheld. However, claims for money due or to become due to Consultant/Contractor from the City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

12. INTEREST IN CONTRACT:

Consultant/Contractor covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant/Contractor shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City Manager determines in writing that Consultant/Contractor's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Consultant/Contractor also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Contract, City determines and notifies Consultant/Contractor in writing that Consultant/Contractor's duties under this Contract warrant greater disclosure by Consultant/Contractor than was originally contemplated. Consultant/Contractor shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.



13. MATERIALS CONFIDENTIAL:

All of the materials prepared or assembled by Consultant/Contractor pursuant to performance of this Contract are confidential and Consultant/Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

14. LIABILITY OF CONSULTANT/CONTRACTOR-NEGLIGENCE:

Consultant/Contractor shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of the Consultant/Contractor's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant/Contractor or its employees, agents, contractors or subcontractors.

15. INDEMNITY AND LITIGATION COSTS:

Consultant/Contractor shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising in any manner by reason of negligent acts or negligent failure to act, recklessness, errors, omissions or willful misconduct incident to the performance of this Contract on the part of Consultant/Contractor except such loss or damage which was caused by the active negligence, sole negligence, or willful misconduct of the City. The provisions of this paragraph shall survive termination or suspension of this Contract.

16. CONSULTANT/CONTRACTOR TO PROVIDE INSURANCE:

A. Consultant/Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII (or in the case of Worker's Compensation insurance, with the State Compensation Insurance Fund of California).

B. Prior to execution of this Contract and prior to commencement of any work, the Consultant/Contractor shall furnish the City with certificates of insurance and copies of original endorsements providing evidence of coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The Consultant/Contractor agrees to furnish one copy of each required endorsement to the City, and additional copies as requested in writing, certified by an authorized representative of the insurer. The failure of Consultant/Contractor or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant/Contractor.



C. In addition to any other remedy the City may have, if Consultant/Contractor fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due Consultant/Contractor under this Contract.

D. No policy required by this Contract shall be endorsed to suspended, voided, canceled, terminated by either party, or reduced in coverage or in limits unless the Consultant/Contractor has provided thirty (30) days' prior written notice by certified mail, return receipt requested, to the City.

E. Any deductibles, aggregate limits, pending claims or lawsuits which may diminish the aggregate limits, or self-insured retentions, are the sole responsibility of the Consultant/Contractor.

F. Aggregate Limits/Impairment.

If any of the insurance coverages required by this section contain annual aggregate limits, the Consultant/Contractor must give the City notice of any pending claim or lawsuit which may diminish the aggregate. The Consultant/Contractor must take steps to restore the impaired aggregates or provide replacement insurance protection. The City has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect City's protection are allowed without City's prior written consent.

G. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant/Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant/Contractor under the Contract.

H. The Consultant/Contractor and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Consultant/Contractor and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant/Contractor or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract.

I. Worker's Compensation and Employer's Liability Insurance.

1. Worker's Compensation Insurance to protect the Consultant/Contractor, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and federal statutes and regulations. The Consultant/Contractor shall execute a certificate of compliance with Labor Code Section 3700, on the form provided in the Contract Documents.



2. Consultant/Contractor shall provide a Waiver of Subrogation endorsement in favor of the City, its officers, officials, employees, agents and volunteers for losses arising from work performed by the Consultant/Contractor

J. Commercial General Liability Insurance

1. The insurance shall be provided on form CG0001, or its equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and subconsultant's work and personal and advertising injury resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence and \$2,000,000 general and products/completed operations aggregates.

2. The commercial general liability insurance shall also include the following:

a. Endorsement equivalent to CG 2010 1185 naming the City, its officers, officials, employees, agents, and volunteers as additional insureds. The endorsement shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

b. Endorsement stating insurance provided to the City shall be primary as respects the City, its officers, officials, employees and any insurance or self insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

c. Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

e. Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Consultant/Contractor under the Contract, including, without limitation, set forth in Section 15, Indemnity and Litigation Costs.

K. Commercial Automobile Liability Insurance.

1. The commercial automobile liability insurance shall include, but shall not be limited to, protection against claims for death, bodily or personal injury, or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly



employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence.

2. The commercial automobile liability insurance shall include the same endorsements as required for Commercial General Liability Insurance (16.J.2 above.)

L. Professional Liability.

The Consultant/Contractor and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract and for five years thereafter, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than \$1,000,000 per claim.

17. MISCELLANEOUS PROVISIONS:

A. Compliance With Laws. Consultant/Contractor shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work, including laws relating to prevailing wages pursuant to Labor Code section 1771 et seq.

B. Non-Discrimination. Consultant/Contractor shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation. Consultant/Contractor shall comply with Section 122(a) of the State and Local Fiscal Assistance Act of 1972.

C. Inspection of Records. Consultant/Contractor shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Contract are made to the Consultant/Contractor.

D. Entirety of Agreement. This Contract constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Contract. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

E. Notices. All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:



CITY:

Attn: City Manager
600 Sixth Street
Lincoln, CA 95648

CONSULTANT/CONTRACTOR: CARDNO

701 University Avenue, Suite 200
Sacramento, CA 95825

F. Governing Law. This Contract shall be interpreted and governed by the laws of the State of California.

G. Venue. Any action arising out of this Contract shall be brought in Placer County, California, regardless of where else venue may lie.

H. Attorneys' Fees. In any action brought by either party to enforce the terms of this Contract, each party shall bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

I. Counterparts. The parties may execute this Contract in two or more counterparts, which shall, in the aggregate, be signed by all the parties, each counterpart shall be deemed an original instrument as against any party who has signed it.

J. Severability. If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.



CARDNO
701 University Avenue, Suite 200
Sacramento, CA 95825

Katie Ross-Smith
(Authorized Signature)

Katie Ross-Smith, Branch Manager
Print Name

CITY OF LINCOLN,
a municipal corporation

Matthew Brower, City Manager

Dated

APPROVED AS TO FORM:

Leslie Walker, Interim City Attorney

Dated

ATTEST:

City Clerk

Dated

City Accountability:

Department responsible for contract:

Public Works Department

Staff responsible for contract:

Jennifer Hanson, Public Services Director



EXHIBIT A

SCOPE OF WORK

CARDNO to provide environmental consulting services for the purpose of producing an Overall Open Space Operations and Management Plan to cover all open space and preserve areas under the city's ownership and control, for a one-year period beginning FY 2016/2017 (September 13, 2016) and ending FY 2017/2018 (September 13, 2017), with the option to extend the contract for one additional one-year term if needed.

(Please see attached proposal for full scope of services).

May 11, 2016

Cardno

Jennifer Hanson
City of Lincoln
600 Sixth Street
Lincoln, CA 95648

701 University Avenue
Suite 200
Sacramento, CA 95825
USA

Phone 916 923 1097
Toll-free 800 368 7511
Fax 916 923 6251
www.cardno.com

Subject: Preparation of City of Lincoln General Open Space Management Plan

Dear Ms. Hanson

www.cardno.com

At your request, Cardno has prepared the following scope of work and cost proposal for environmental services in support of Preparation of City of Lincoln General Open Space Management Plan (Management Plan), Lincoln, CA.

Scope of Work

The scope of work includes the following task:

TASK 1 - Management Plan Preparation and Agency Coordination

Cardno will assist the City of Lincoln with the preparation and approval of an Operations and Management Plan (O&M Plan) for Open Space under the City's ownership and control. The Plan will incorporate language that addresses existing O&M Plans previously approved for the Open Space areas already under City control, and will supersede some previous documents once approved. The Management Plan will contain the standards, policies, reporting methods, management, and activities permitted in Open Space to be dedicated to the City in the future and, where appropriate, existing City-managed open space areas. This Plan will only include items pertaining to Open Space management and won't include language that concerns the establishment of habitat within mitigation Preserves, as such establishment would be expected to occur prior to preserve turn over to the City.

Cardno will work with the City of Lincoln and the US Army Corps (USACE) to submit a subsequent draft plan for the review and approval of the USACE. A preliminary plan has already been prepared, but based on comments and discussions with the City and USACE, the plan will be inclusive of more open space areas, and a transfer methodology has been defined. Revisions to the Plan are to include more details on biological communities, monitoring schedule, maintenance activities, steps for the City to accept a new Open Space property, directions for the preparation of a Baseline Study and Report, Notice of Intent template, and a Deed Restriction template. As discussed with the USACE and the City, the new Plan will be a complete and unchanging document that will be used to guide the City with Open Space monitoring and help standardize activities and requirements associated with existing and new Open Space areas under the City's ownership.

Ongoing weekly communication is anticipated as part of this scope of work, and it is anticipated that three meetings with the City and/or the USACE will be required.

Scope and Cost Assumptions

This scope of work and cost estimate is based on the following assumptions:

1. The City of Lincoln will provide access to the O&M Plans for all existing Open Space properties that are under City management
2. No additional technical management plans or policies will need to be developed (i.e. beaver management plan, oak tree management plan, vector control, etc.)
3. Once the Plan has been approved by the USACE, it will be considered a final document. Subsequent revisions are not part of this SOW.
4. The Plan will apply to Open Space areas in which 1) agency-required mitigation projects have been completed, success criteria have been met, and success/biological monitoring has been completed, as confirmed by the agencies, or 2) no mitigation creation was required. No construction, success monitoring, focused biological surveys, and/or success reporting will be discussed within the Plan or be required for any Open Space properties.

Budget

The estimated budget for implementation of this scope of work is \$25,000 based on the attached 2016 Schedule of Fees for the City of Lincoln Professional Services (SOF) with work billed on a time and materials basis.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,



Shannon Karvonen
Senior Consultant
for Cardno
Direct Line 916-986-3848
Email: shannon.karvonen@cardno.com

Attachment (s): SOF

2016 Schedule of Fees - Professional Services for City of Lincoln Natural Resources & Health Sciences Division

Field Technician	\$ 70/hour
Project Assistant	82
Project Coordinator	97
Production Specialist	97
Technical Editor	112
GIS, CADD, or Drafting Consultant	107
Assistant Staff Consultant	82
Staff Consultant	107
Senior Staff Consultant	117
Project Consultant	148
Senior Project Consultant	179
Senior Consultant 1	189
Senior Consultant 2	230
Director	281

Consultant and Director positions include professional Scientist, Ecologist, Economist, Engineer, Hydrogeologist, Geologist, Planner, and other technical and non-technical staff positions. Consultant hours spent providing expert witness, deposition, or preparation for deposition will be charged at 1½ times regular billing rate.

Expenses

Use of a personal vehicle will be at the current IRS allowable rate. Subconsultant fees and all other costs identifiable to an assignment will be charged at cost plus ten percent (10%).

Payment

Cardno invoices will be submitted monthly. Payment is due on or before the thirtieth (30th) day following the date of the invoice. Invoices paid more than thirty (30) days after the invoice date are subject to a finance charge of one percent (1%) per month.

Conditions

Cardno specifies that our services are performed, within the limits prescribed by our clients, with the usual thoroughness and competence of the environmental consulting profession. No other warranty or representation, either expressed or implied, is included or intended in our proposals, contracts, or reports.



EXHIBIT B

SCHEDULE OF PERFORMANCE

CARDNO to provide environmental consulting services for the purpose of producing an Overall Open Space Operations and Management Plan to cover all open space and preserve areas under the city's ownership and control, for a one-year period beginning FY 2016/2017 (September 13, 2016) and ending FY 2017/2018 (September 13, 2017), with the option to extend the contract for one additional one-year term if needed, for a total amount not to exceed \$27,500 (10% escalation included).



EXHIBIT C

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700 Labor Code § 1861

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CARDNO

By: Branch Manager
Title

Katie Ross-Smith
Print Name

9/1/16
Date



EXHIBIT D

FACILITIES, EQUIPMENT, OTHER MATERIALS

Consultant/Contractor shall be responsible for providing all necessary facilities, equipment and personnel to undertake the necessary task(s) outlined in **Exhibit A**.



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
09/01/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Southwest, Inc. Houston TX Office 5555 San Felipe Suite 1500 Houston TX 77056 USA	CONTACT NAME: PHONE (A/C. No. Ext): 8662837122 FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
INSURED Cardno, Inc. 10004 Park Meadows Drive Suite 300 Lone Tree CO 80124 USA	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Zurich American Ins Co</td><td>16535</td></tr><tr><td>INSURER B: Ironshore Specialty Insurance Company</td><td>25445</td></tr><tr><td>INSURER C: Lexington Insurance Company</td><td>19437</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Zurich American Ins Co	16535	INSURER B: Ironshore Specialty Insurance Company	25445	INSURER C: Lexington Insurance Company	19437	INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Zurich American Ins Co	16535														
INSURER B: Ironshore Specialty Insurance Company	25445														
INSURER C: Lexington Insurance Company	19437														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** 570063510538 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GL0018396100 General Liability	09/30/2015	09/30/2016	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$10,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP 0183962-00 Auto (AOS)	09/30/2015	09/30/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC018396000 WC - AOS WC018415300 WC - (WI)	09/30/2015	09/30/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000
C	Archit&Eng Prof			QC1505384 Professional SIR applies per policy terms & conditions	09/30/2015	09/30/2016	Each claim \$1,000,000 Aggregate \$1,000,000 SIR \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Contractual Liability and Products and Completed Operations are included under the General Liability policy. Workers' Compensation policy includes U.S. Harbor Workers' and Longshoremen's Act coverage. RE: Preparation of City of Lincoln General Open Space Management Plan. City of Lincoln, its officers, officials, employees, agents and volunteers are included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. General Liability evidenced herein is Primary and Non-Contributory to other insurance available to Additional Insured, but only in accordance with the policy's provisions. A Waiver of Subrogation is granted in favor of City of Lincoln, its officers, officials, employees, agents and volunteers in accordance with the policy provisions of the workers' Compensation policy.

CERTIFICATE HOLDER

City of Lincoln 600 Sixth Street Lincoln CA 95648 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Southwest, Inc.</i>

Holder Identifier :

Certificate No : 570063510538

**ADDITIONAL REMARKS SCHEDULE**

Page _ of _

AGENCY Aon Risk Services Southwest, Inc.		NAMED INSURED Cardno, Inc.	
POLICY NUMBER See Certificate Number: 570063510538			
CARRIER See Certificate Number: 570063510538	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Additional Description of Operations / Locations / Vehicles:

Should General Liability, Automobile Liability, Professional Liability and Workers' Compensation policies be cancelled before the expiration date thereof, the policy provisions will govern how notice of cancellation may be delivered to certificate holders in accordance with the policy provisions of each policy.



ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services Southwest, Inc.		NAMED INSURED Cardno, Inc.	
POLICY NUMBER See Certificate Number: 570063510538			
CARRIER See Certificate Number: 570063510538	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

CARDNO NAMED INSUREDS

Cardno EM-Assit, Inc.
 Cardno Emerging Markets USA, Ltd.
 Cardno ENTRIX
 Cardno ERI
 Cardno GS, Inc.
 Cardno Haynes Whaley, Inc.
 Cardno JFNew
 Cardno MMA
 Cardno NC, Inc.
 Cardno TBE (AZ)
 Cardno TBE (FL)
 Cardno TBE; TBE Group, Inc.
 Cardno TEC, Inc.
 Cardno USA, Inc.
 Cardno WRG, Inc.
 Cardno WRG, Inc. dba WRG Designs Inc.
 Cardno, Inc (OR)
 Cardno, Inc. (TX)
 Cardno, Inc. (FL)
 Cardno (MI), Inc.
 Cardno PPI Engineering & Construction, Services LLC., PPI Technology Services, LLC., PPI Quality & Asset Management, LLC., and its Affiliated Companies
 Entrix Inc. dba Cardno Entrix
 Environmental Resolutions, Inc.
 J.F. New & Associates, Inc.
 JFNew
 Marshall Miller & Associates, Inc.
 TBE Group, Inc. (Adden)
 TBE Group, Inc. dba: Cardno TBE
 TBE Group, Inc., Cardno TBE
 TBE Professional Services, PLLC
 WRG North Carolina PLLC
 XP Software Inc.
 TBE Group (Canada) ULC is included as a Named Insured as identified in the insurance Policy referenced on this certificate

**ZURICH**

Coverage Extension Endorsement – Liability Only

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
BAP 0183962-00	09/30/2015	09/30/2016	09/30/2015	14340-000	--	--

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

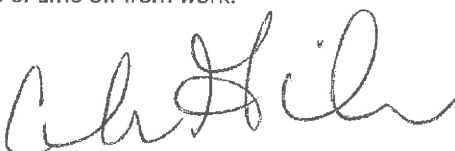
- Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
 - Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
 - Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
 - Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.
2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

x: 

C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

D. Driver Safety Program Liability Coverage

The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Amended Duties In The Event Of Accident, Claim, Suit Or Loss

Paragraph a. of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

F. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

G. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

H. Hired Auto – World Wide Coverage

Paragraph 7a.(5) of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

I. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

J. Expected Or Intended Injury

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

All other terms, conditions, provisions and exclusions of this policy remain the same.



Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: CARDNO USA, INC.

Address (including ZIP Code):

10004 PARK MEADOWS DR, SUITE 300

LONE TREE, CO 80126

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
 - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.